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APPENDIX A

ORDER PERMITTING TRUSTEE TO REJECT EXECUTORY CONTRACT

Filed Dec. 14, 1962.

(Title Omitted.)

It Appearing from the record herein that Irwin Ray, Trustee in Reorganization of Atlas Sewing Centers, Inc., and its subsidiaries, on or about the 20th day of September, 1962, filed in this Court his Petition to Reject Executory Contract, the executory contract set forth in the petition being designated as "Master Agreement No. 1", a copy of which was attached to said petition, being an agreement by and between the debtor and its subsidiaries in reorganization and Beneficial Finance Company wherein it is alleged that Beneficial Finance Company for services to be rendered to the debtors in reorganization was to purchase all of the then existing and outstanding consumer paper owned by the debtors in reorganization, the consideration to be paid therefor being 75% of all collection realized by Beneficial Finance Company from consumer paper assigned, and, as further consideration for the collection efforts of Beneficial Finance Company, Beneficial Finance Company according to the terms of the agreement was to retain 25% of all collections made.

Upon the petition of the Trustee this Court on the 20th day of September, 1962, prescribed the form and manner in which notice was to be given of a hearing to be conducted on the Trustee's petition and the persons to whom notice was to be directed, the Court having set the 8th day of November, 1962, at 2:00 o'clock P. M.,

Federal Building, Miami, Florida, before the undersigned Judge as the time and place for said hearing.

On November 8th, 1962, in accordance with the order affixing the hearing, and in accordance with the notice prescribed by this Court and given by the Trustee, a hearing was conducted in open Court before me, at which time there were present J. Edward Wortor, as attorney for Irwin Ray, Trustee; Shutts, Bowen, Simmons, Prevatt & Boureau, by Seneca B. Anderson, Esq., attorneys for Beneficial Finance Company; Randolph Guthrie, Esq., attorney for Majority Holders; Downey & Lewis, and Nicholson, Howard & Brawner, by Frank A. Howard, Esq., attorneys for Belk's Department Store; Irving M. Wolff, Esq., and Phillips, attorneys for Banco Popular de Puerto Rico; Harold Friedman, Esq., attorney for Brother International; and Patton & Kanner by Samuel J. Kanner, Esq., attorneys for the debtors.

At the time of the hearing the respondent, Beneficial Finance Company, filed in the proceedings a Motion to Dismiss the petition of the Trustee, alleging the lack of this Court's jurisdiction over the Trustee's petition and the subject matter thereof. In support of the Trustee's petition the Trustee presented testimony of witnesses for this Court's consideration, the same being: Herbert Kern, President of the debtors in reorganization; Eugene C. Rosiere, Vice President of the debtors in reorganization; and Charlotte Blackburn, Vice President of the debtors in reorganization. In addition the Trustee presented in support of his petition Exhibits =1, =2 and =3, which were admitted into evidence.

And it further appearing at the time of the hearing

that the attorney for Beneficial Finance Company, at the conclusion of the Trustee's case, requested that this Court grant to Beneficial Finance Company a period of ten (10) days within which to advise the Court whether or not Beneficial Finance Company desired by way of rebuttal of the Trustee's evidence to offer any evidence on its own; and the Court at the time of the entry of this order not having received any advice from Beneficial Finance Company in respect of its request for time to enter rebuttal evidence, it is concluded by this Court at this time that Beneficial Finance Company does not intend to offer any evidence.

Now upon the verified petition of the Trustee, the Motion to Dismiss filed herein by Benefician Finance Company, the Answer to the Trustee's petition filed by the Majority Holders, and upon the testimony of witnesses, the Trustee's exhibits and the entire proceedings held before me on the 8th day of November, 1962, it appearing to the Court that the contract by and between the debtors in reorganization and Beneficial Finance Company is executory and burdensome to the estate of the debtors, it is

Ordered that Irwin Ray, Trustee in Reorganization of the debtors herein, be and he hereby is permitted to reject the contract designated "Master Agreement No. 1" by and between the debtors in reorganization and Beneficial Finance Co. of North Jersey, dated the 27th day of January, 1961. It is

Further Ordered that the entry of this order shall be deemed to constitute a rejection of said contract by the Trustee, Irwin Ray. It is

Further Ordered that the Motion to Dismiss filed by Beneficial Finance Company be and the same is hereby denied. It is

Further Ordered that Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates wherever located, Forthwith account to the Trustee, Irwin Ray, for all monies collected and all monies expended pursuant to the terms and conditions of the agreement dated January 27th, 1961, to date. It is

Further Ordered that Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates wherever located, forthwith turn over to the Trustee, Irwin Ray, all customer ledger cards, contracts, agreements, mortgages, notes, and customer paper of any and all description, held presently by Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates, received pursuant to the terms of Master Agreement #1, dated January 27th, 1960. It is

Further Ordered that the Trustee, Irwin Ray, be and he is hereby authorized to forthwith embark upon collection of the accounts receivable, contracts, agreements, mortgages, notes and customer paper received from Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates, which are turned over to him by virtue of the entry of this order, and that the Trustee, upon collecting monies from said receivables turned over to him, shall maintain and keep separate accounts in authorized depositories for the receipt of funds from those sources by him.

Done and Ordered at Miami, Florida, on this the 14th day of December, 1962.

EMETT C. CHOATE,
United States District Judge.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20302

BENEFICIAL FINANCE CO. OF NORTH JERSEY,

Appellant,

versus

IRWIN RAY, as Trustee under Reorganization Proceedings of ATLAS SEWING CENTERS, INC.,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(February 17, 1964.)

Before TUTTLE, Chief Judge, and PHILLIPS* and JONES, Circuit Judges.

PER CURIAM: It appearing that the written documents under which the conditional sales contracts here were transferred to appellant constituted appellant an

*Of the Tenth Circuit, sitting by designation.

agent only for collection of the contracts, we conclude that the trial court did not err in entering a summary turnover order. A reading of the contracts under which Beneficial obtained possession of the property makes it plain that it had no adverse claim of title to the contracts that was more than colorable. As we stated in *B. F. Avery & Sons Co. v. Davis*, 5 Cir., 192 F. 2d 255, quoted with approval in *Spach, Trustee v. Fisher*, 5 Cir., 310 F. 2d 328, 330:

> "Where a controversy arises as to whether there is such an adverse claim, the rule is that the referee can summarily enquire into it, and if it clearly appears that possession was in or for the bankrupt, and the adverse claim or right is only colorable, he may make a judgment accordingly: but if there be a possession before bankruptcy that was really adverse and asserted in good faith the referee may not adjudge its merits, but the trustee must seek relief by a plenary suit."

The order of the trial court is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1963

No. 20302

D. C. Docket No. 168-62-M-BK-EC

BENEFICIAL FINANCE CO. OF NORTH JERSEY,
Appellant,

versus

IRWIN RAY, as Trustee under Reorganization Proceedings of ATLAS SEWING CENTERS, INC.,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before TUTTLE, Chief Judge, and PHILLIPS* and JONES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

*Of the Tenth Circuit, sitting by designation.

On CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Beneficial Finance Co. of North Jersey, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

February 17, 1964

Issued as Mandate:

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20302

BENEFICIAL FINANCE CO. OF NORTH JERSEY,

Appellant.

versus

IRWIN RAY, as Trustee under Reorganization Proceedings of ATLAS SEWING CENTERS, INC.,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(March 17, 1964.)

ON PETITION FOR REHEARING

Before TUTTLE, Chief Judge, and PHILLIPS* and JONES, Circuit Judges.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above styled and numbered cause be, and the same is, hereby DENIED.

*Of the Tenth Circuit, sitting by designation.

APPENDIX D

SECTION 116, NATIONAL BANKRUPTCY ACT, 11 U.S.C., Section 516, paragraph 1.

"Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties herein above and elsewhere in this chapter conferred and imposed upon him and the court —

(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;"

APPENDIX E

AGREEMENT No. 1

between

MAJORITY HOLDERS

and

ATLAS SEWING CENTERS, INC.

and

SUBSIDIARIES

January 27, 1961

TO: MAJORITY HOLDERS UNDER AGREEMENT MADE AS OF NOVEMBER 9, 1960, AS AMENDED

Referring to the Agreement made as of November 9, 1960, as amended, and to the proposed form of Master Agreement No. 1 dated January 27, 1961 between the undersigned and Beneficial Finance Co. of North Jersey (hereinafter called the "Master Agreement" and Beneficial", respectively), we hereby confirm our agreement with you as follows:

1. We agree that any notes (as defined in the Master Agreement) delivered to Beneficial or to any of its affiliated corporations or associated companies as may be designated by it pursuant to the Master Agreement (for the purposes of this agreement, the term "Beneficial" shall include all such corporations and companies) are to be held, subject to the rights of Beneficial, in pledge and as security for the Institution Indebtedness owing to the

Institutions (the terms "Institution Indebtedness" and "Institutions" being as defined in the aforesaid Agreement made as of November 9, 1960) and other obligations of the undersigned provided to be paid in said Agreement made as of November 9, 1960, all in accordance with and as contemplated by the terms thereof and, subject to the aforesaid rights of Beneficial, all moneys collected by Beneficial under the Master Agreement shall be held by Beneficial as security for the Institution Indebtedness and such other obligations, and when any such moneys are paid over by Beneficial to Irving Trust Company, as Agent under said Agreement made as of November 9, 1960, such moneys shall be held in Cash Collateral Accounts as security for the Institution Indebtedness and such other obligations as provided in said Agreement made as of November 9, 1960 and disposed of as provided therein.

2. We hereby agree and confirm that any and all assignments of notes made pursuant to the Master Agreement shall be deemed to be and shall be assignments for the purpose of securing payment of the Institution Indebtedness and certain obligations of the undersigned as set forth in and contemplated by said Agreement made as of November 9, 1960, all as if such assignments contained express provisions to such effect, subject to the rights of Beneficial under the Master Agreement.

3. You and we hereby confirm that the Master Agreement constitutes an agreement for servicing the collection of the notes by Beneficial and a security device for the benefit of the Institutions and certain other creditors of the undersigned as aforesaid supplementing the provisions of aforesaid Agreement made as of November 9, 1960 and all assignments heretofore executed and delivered by

the undersigned for such purpose, and, notwithstanding anything herein or in the Master Agreement to the contrary, does not constitute a loan by, or other disposition of the notes to, Beneficial. We will make no changes in the Master Agreement without first consulting you and obtaining your prior written consent.

4. You hereby consent, as Majority Holders under said Agreement made as of November 9, 1960, to our entering into the Master Agreement and to the performance by us of our obligations thereunder, and, without limiting the generality of the foregoing, you hereby authorize and direct Industrial National Bank of Miami, Custodian under said Agreement made as of November 9, 1960, to deliver to Beneficial any and all notes of the undersigned held by said Custodian.

5. (a) This agreement, the Master Agreement, and Agreement No. 1 dated January 27, 1961 between the Majority Holders and Beneficial shall constitute a supplement within the terms and provisions of the Agreement made as of November 9, 1960, with Beneficial being hereby substituted for the Custodian with respect to the notes delivered to it and also for the banks of deposit.

(b) Unless otherwise directed by you, promptly upon receipt by us, all proceeds from the sale of repossessed or returned merchandise covered by notes which are the subject of the Master Agreement, including proceeds from cash sales, down payments and the notes from installment sales, shall be turned over in the identical form received by us to Beneficial for the account of the Institutions and all such proceeds shall be paid by Beneficial to Irving Trust Company, as Agent as aforesaid. All proceeds

from trade-ins shall be similarly treated. In such connection, we will give Beneficial all necessary instructions and directions.

(c) Nothing herein contained shall impair or adversely affect any of the rights of the Institutions or the Majority Holders under the Agreement made as of November 9, 1960 or with respect to any assignments referred to therein or contemplated thereunder and the Agreement made as of November 9, 1960 shall in all respects remain in full force and effect.

6. In accordance with the terms of the telegraphic amendment to the Agreement made as of November 9, 1960, the amount of indebtedness owing to the Institutions listed below is hereby fixed as follows in lieu of the amounts appearing in Exhibit A to said Agreemnt made as of November 9, 1960:

Name of Institution	Principal Amount of Indebtedness
First National Bank and Trust Company of Tulsa	$80,000.00
State Bank and Trust Company of Wellston, St. Louis	79,100.00
Citizens National Bank of Lubbock, Texas	78,760.90

The indebtedness owing to The Chase Manhattan Bank, Santurce, Puerto Rico and Banco Popular de Puerto Rico, Ponce, Puerto Rico, is guaranteed by Atlas Sewing Centers, Inc.; accordingly, the amount of such indebtedness owing to said banks shall, notwithstanding the fact that said banks are not parties to the Agreement made as of

November 9, 1960, continue to constitute Institution Indebtedness, but distribution and allocation of payments in respect of such amounts owing to said banks shall be determined by agreemnt between the Majority Holders and said banks. To give effect to the foregoing, the Collateral Note, to be delivered as provided in the Agreement made as of November 9, 1960, is hereby fixed at $13,477,860.90.

7. We acknowledge the receipt of Agreement No. 1 between Beneficial and the Majority Holders and agree to comply with all terms thereof in so far as they relate to us.

8. This agreement may be executed in counterparts.

ATLAS SEWING CENTERS, INC.

By _____
President

Each of the Subsidiaries of Atlas Sewing Centers, Inc. listed in Exhibit A attached hereto.

By _____
President of Each Subsidiary

ACCEPTED:

Majority Holders under Agreement Made as of November 9, 1960, as amended:

THE CLEVELAND TRUST COMPANY

By _____

EMPIRE TRUST COMPANY
By _____

FIRST WESTERN BANK & TRUST COMPANY
By _____

IRVING TRUST COMPANY
By _____

JEFFERSON STANDARD LIFE INSURANCE COMPANY
By _____

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
By _____

TEXAS NATIONAL BANK OF HOUSTON
By _____

Name of Subsidiary

Atlas Sewing Centers, Inc. of Alabama
Atlas Sewing Centers, Inc. of Arizona
Atlas Sewing Centers, Inc. of Baltimore
Atlas Sewing Centers, Inc. of Biloxi
Atlas Sewing Centers, Inc. of Cleveland
Atlas Sewing Centers, Inc. of Colorado
Atlas Sewing Centers, Inc. of Columbus
Atlas Sewing Centers, Inc. of Corpus Christi
Atlas Sewing Centers, Inc. of Dallas
Atlas Sewing Centers, Inc. of Denver
Atlas Sewing Centers, Inc. of Fort Worth
Atlas Sewing Centers, Inc. of Georgia
Atlas Sewing Centers, Inc. of Hawaii

Atlas Sewing Centers, Inc. of Indiana
Atlas Sewing Centers, Inc. of Indianapolis
Atlas Sewing Centers, Inc. of Jackson
Atlas Sewing Centers, Inc. of Jacksonville
Atlas Sewing Centers, Inc. of Kansas City
Atlas Sewing Centers, Inc. of Kentucky
Atlas Sewing Centers, Inc. of Memphis
Atlas Sewing Centers, Inc. of Miami
Atlas Sewing Centers, Inc. of Minneapolis
Atlas Sewing Centers, Inc. of Mobile
Atlas Sewing Centers, Inc. of Nebraska
Atlas Sewing Centers, Inc. of New Jersey
Atlas Sewing Centers, Inc. of New Mexico
Atlas Sewing Centers, Inc. of Norfolk
Atlas Sewing Centers, Inc. of North Carolina
Atlas Sewing Centers, Inc. of Oklahoma
Atlas Sewing Centers, Inc. of Oregon
Atlas Sewing Centers, Inc. of Pensacola
Atlas Sewing Centers, Inc. of Philadelphia
Atlas Sewing Centers, Inc. of Pittsburgh
Atlas Sewing Centers, Inc. of Richmond
Atlas Sewing Centers, Inc. of San Antonio
Atlas Sewing Centers, Inc. of South Carolina
Atlas Sewing Centers, Inc. of St. Louis
Atlas Sewing Centers, Inc. of Tennessee
Atlas Sewing Centers, Inc. of Texas
Atlas Sewing Centers, Inc. of Utah
Atlas Sewing Centers, Inc. of Virginia
Atlas Sewing Centers, Inc. of Washington, D. C.
Atlas Sewing Centers of New Orleans, Inc.
Atlas Stores, Inc. of California
Atlas Stores, Inc. of San Diego
Atlas Stores, Inc. of San Francisco
Atlas Stores, Inc. of San Jose

APPENDIX F

AGREEMENT No. 1

between

BENEFICIAL FINANCE CO. OF NORTH JERSEY

and

MAJORITY HOLDERS

January 27, 1961

TO: Beneficial Finance Co. of North Jersey
200 South Street
Morristown, New Jersey

Reference is hereby made to the proposed form of Master Agreement No. 1 dated January 27, 1961, between you on the one part and Atlas Sewing Centers, Inc., and certain of its subsidiaries on the other part. In order to induce you to enter into such Master Agreement and to make and cause your affiliated corporations and associated companies to make purchases of notes as contemplated therein, the Majority Holders as set forth in the Agreement made as of November 9, 1960, as amended, heretofore delivered to you, and pursuant to the authority granted to them therein and for the benefit of the Institutions as therein defined, do hereby:

1. Consent to Atlas Sewing Centers, Inc. and its subsidiaries entering into such Master Agreement with you and consent to all assignments made pursuant to such Master Agreement, to you or any of your affiliated corporations or associated com-

panies (reference to you herein shall include all such corporations and companies);

2. Agree to hold all moneys paid to Irving Trust Company, as Agent, pursuant to the provisions of Paragraph 7 of said Master Agreement to the extent necessary to make any repayments to you required thereunder, and agree to use such funds to make any such payments so required; and

3. Authorize and direct Industrial National Bank of Miami, Custodian under said Agreement made as of November 9, 1960, as amended, to deliver to you any and all notes received from Atlas Sewing Centers, Inc. and its subsidiaries named in Exhibit B to said Master Agreement.

In consideration of the foregoing you agree to the following:

1. You will not make any changes in said Master Agreemnt without the consent of said Majority Holders or their agent;

2. Subject to your paramount right, title and interest in the notes as provided in said Master Agreement, the rights of the Institutions as provided in the aforesaid Agreement made as of November 9, 1960, as amended, and in any assignments made pursuant thereto, or otherwise, in and to the notes, the property covered thereby and the proceeds therefrom, are hereby expressly preserved and maintained; and

3. No disposition shall be made by you of any personal property repossessed or returned except with the consent of the Majority Holders or their agent.

This agreement may be executed in counterparts.

If the foregoing is acceptable to you, please indicate your assent thereto by signing below.

Majority Holders under Agreement made as of November 9, 1960, as amended:

THE CLEVELAND TRUST COMPANY
By _____

EMPIRE TRUST COMPANY
By _____

FIRST WESTERN BANK & TRUST COMPANY
By _____

IRVING TRUST COMPANY
By _____

JEFFERSON STANDARD LIFE INSURANCE COMPANY
By _____

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
By _____

TEXAS NATIONAL BANK OF HOUSTON

By _____

Accepted: January 27, 1961

BENEFICIAL FINANCE CO. OF NORTH JERSEY

By _____